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From:

Sent: Tuesday, August 28, 2012 11:49:56 AM

To:

Cc:

Subject: Providing Title Reports to Bidders - 6103 Analysis

This email responds to your request for advice regarding whether the Service may provide prospective bidders at IRS auctions copies of title reports the Service has purchased without getting the title company's permission.

We previously provided advice to you from [REDACTED] regarding whether the title reports would be considered proprietary. However, even if the title company allowed the title reports to be disclosed to prospective bidders, we considered whether the title reports constituted return information which would be prohibited from disclosure under section 6103. It is our understanding that, in preparation for seizure and sale of property, the Revenue Officer (RO) performs a title search at the courthouse and then prepares a draft Form 2434-B – Notice of Encumbrances Against or Interests in Property Offered for Sale. At some time before the seizure, the RO finalizes the Form 2434-B. A decision is made whether or not to order a commercial title report. If a commercial title report is ordered, the Service provides the title company with a legal description of the property up for auction and the title company then performs a title search of information taken from the public record and compiles it into a title report which is provided to the Service. The RO then compares the title report to the Form 2434-B, investigates any discrepancies, and updates the Form 2434-B, if necessary. It is our understanding that the Service's current policy is to provide the Form 2434-B to bidders at auctions [REDACTED]

Section 6103 provides the general rule that returns and return information are confidential, except as authorized under the Code. Return information is defined as any information gathered by, collected by, created by, or otherwise in the hands of the Secretary in connection with determining a taxpayer's liability or potential liability under the Code including information pertaining to a taxpayer's payments. As such, if a commercial title report is ordered, it would be the return information of the taxpayer from whom the Service was collecting. As such, the title reports could only be disclosed if an exception under section 6103 applied. After a careful review of all the exceptions, the only exception that we thought could potentially apply is section 6103(k)(6).

Section 6103(k)(6) permits disclosures for tax administration purposes to the extent necessary in the performance of official duties, including collection activities. In order to make a disclosure under (k)(6), the Service must reasonably believe that the activity cannot properly occur without the disclosure. Treas. Reg. § 301.6103(k)(6)-1(a)(2). In this case, given that there have not been any real discussions about the necessity or benefit of disclosing the title reports at auctions (excluding the issue of whether the title reports are proprietary), we cannot say that the disclosures would be permitted under section 6103(k)(6). Although the title reports may contain materially the same information as the Form 2434-B, disclosure of the title reports is not permitted under section 6103 simply because disclosure of the Form 2434-B is permitted. The title reports are arguably duplicative and a separate analysis of why this additional

disclosure is necessary would be required before the disclosure could be authorized under section 6103(k)(6).



If you have any questions, or if we can be of any further assistance, please let me know.